

JAIME ALVAREZ ORNELAS,  
Petitioner,  
v.  
A. NEIL CLARK, Field Office Director, U.S.  
Immigration and Customs Enforcement,  
Respondent.

REPORT AND RECOMMENDATION  
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1 After this Court's ruling and before briefing was completed in the Ninth Circuit, the Ninth  
2 Circuit issued decisions in *Casas-Castrillon v. DHS*, 535 F.3d 942, 948 (9<sup>th</sup> Cir. July 25, 2008);  
3 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9<sup>th</sup> Cir. July 25, 2008). On September 15, 2008, the  
4 government moved the Ninth Circuit to vacate the judgment in the instant case and remand the  
5 matter to this Court to consider the effect of those decisions on petitioner's habeas petition. On  
6 December 3, 2008, the Ninth Circuit granted the government's motion for vacatur and remand. (Dkt.  
7 29). On February 11, 2009, this Court directed the parties to file supplemental briefing addressing  
8 the application of these cases to petitioner's habeas petition. (Dkt. 32).

9 On February 20, 2009, respondent filed Supplemental Briefing and Motion to Dismiss,  
10 indicating that petitioner was removed from the United States to Mexico on December 17, 2008.  
11 (Dkt. 34). Respondents assert that because petitioner is no longer detained by ICE, his habeas  
12 petition has become moot and should be dismissed. *Id.* Petitioner did not file a response. (Dkts. 36  
13 and 37).

14 For a federal court to have jurisdiction, "an actual controversy must exist at all stages of the  
15 litigation." *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1173 (9<sup>th</sup> Cir. 2002). "When  
16 a controversy no longer exists, the case is moot." *Id.* Because petitioner is no longer detained by  
17 ICE, the Court finds that petitioner's habeas petition should be dismissed as moot. *See, e.g., Cooney*  
18 *v. Edwards*, 971 F.2d 345, 346 (9<sup>th</sup> Cir. 1992) (holding that the District Court properly dismissed  
19 plaintiff's claims that had become either moot or unripe). Accordingly, I recommend that this action  
20 be dismissed. A proposed Order accompanies this Report and Recommendation.  
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22 DATED this 16th day of April, 2009.

23 s/ Mary Alice Theiler  
24 United States Magistrate Judge  
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